

L.N. 116 of 2008**INTERNATIONAL ORGANIZATIONS (PRIVILEGES AND IMMUNITIES) (BANK FOR INTERNATIONAL SETTLEMENTS) ORDER****CONTENTS**

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**INTERNATIONAL ORGANIZATIONS (PRIVILEGES AND
IMMUNITIES) (BANK FOR INTERNATIONAL
SETTLEMENTS) ORDER**

(Made by the Chief Executive in Council under section 3
of the International Organizations (Privileges and
Immunities) Ordinance (Cap. 558))

1. Commencement

This Order shall come into operation on 18 July 2008.

2. Interpretation

In this Order—

“Bank” (銀行) means the Bank for International Settlements;

“Brussels Protocol” (《布魯塞爾議定書》) means the Protocol regarding the immunities of the Bank for International Settlements, done at Brussels on 30 July 1936;

“Host Country Agreement” (《東道國協定》) means the Host Country Agreement Between the Government of the People’s Republic of China and the Bank for International Settlements Relating to the Establishment and Status of a Representative Office of the Bank for International Settlements in the Hong Kong Special Administrative Region of the People’s Republic of China, done at Basle on 11 May 1998;

“Representative Office” (代表處) means the Representative Office of the Bank in Hong Kong.

**3. Certain provisions of Host Country Agreement
have force of law in Hong Kong**

(1) It is declared that the provisions of the Host Country Agreement as specified in Schedule 1 shall have the force of law in Hong Kong and shall for that purpose be construed in accordance with subsections (2), (3), (4), (5), (6) and (7).

(2) In applying those provisions of the Host Country Agreement, “senior resident representative” shall be construed as meaning the senior resident representative of the Representative Office referred to in paragraph 1 of Article 2 of the Host Country Agreement.

(3) In applying paragraph 5 of Article 5 of the Host Country Agreement, “Headquarters Agreement” shall be construed as meaning the Agreement between the Swiss Federal Council and the Bank to determine the Bank’s legal status in Switzerland, done at Berne on 10 February 1987, as amended from time to time.

(4) In applying paragraph 3 of Article 6 of the Host Country Agreement, “International Telecommunication Convention” shall be construed as meaning the Convention of the International Telecommunication Union, done at Geneva on 22 December 1992 and as amended in 1994.

(5) In applying Article 13 of the Host Country Agreement, the reference to “flagrant instances of criminal offence” shall be construed as a reference to any offence punishable on a first conviction with imprisonment for a term of up to 5 years or with a more severe sentence.

(6) In applying Article 14 of the Host Country Agreement, “senior officials” shall be construed as meaning the Deputy Chief Representative, the Head of Regional Treasury, Asia Pacific and any other officials of the Representative Office of a rank comparable to that of a senior official of any Specialized Agency of the United Nations in the Hong Kong Special Administrative Region.

(7) In applying paragraph 1 of Article 21 of the Host Country Agreement, the reference to “safeguard” shall be construed as including any safeguard that the Central People’s Government authorizes the Government of the Hong Kong Special Administrative Region to apply.

4. Article 1 of Brussels Protocol has force of law in Hong Kong

(1) It is declared that Article 1 of the Brussels Protocol as specified in Schedule 2 shall have the force of law in Hong Kong and shall for that purpose be construed in accordance with subsection (2).

(2) In applying Article 1 of the Brussels Protocol—
“Agreement with Germany” (《與德國的協定》) shall be construed as meaning the Agreement concerning the settlement of financial questions resulting from World War One that the government of Germany entered into with the governments of 16 other countries at The Hague;

“Constituent Charter” (組織章程) shall be construed as meaning the Constituent Charter of the Bank granted by the Swiss Federal Government.

5. The Bank to have legal personality in Hong Kong

The Bank has legal personality in Hong Kong as a body corporate and has all the powers of a natural person of full age and capacity including power—

- (a) to enter into contracts;
- (b) to acquire and dispose of movable and immovable property; and
- (c) to institute and defend legal proceedings.

SCHEDULE 1

[s. 3]

PROVISIONS OF HOST COUNTRY AGREEMENT HAVING FORCE OF LAW IN HONG KONG

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Article 3

Freedom of Action of the Bank

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5. The Bank shall not be subject to any form of financial or banking supervision or obliged to implement any form of accounting standard, or to comply with any form of licensing or registration requirement.

Article 4

Inviolability

1. All or any part of the premises, regardless of ownership, occupied from time to time as offices by the Representative Office shall be considered as premises of the Bank in the HKSAR and shall be inviolable; such premises shall be under the control and authority of the Bank. No representative of ... the HKSAR authorities, may enter upon the premises of the Representative Office to perform any duty without the express consent of, and under the conditions, if any, agreed to by the President of the Bank, or the General Manager of the Bank, or the Assistant General Manager of the Bank, or the senior resident representative, or their duly authorized representative. Consent of the senior resident representative may, however, be assumed in the case of fire or other disaster requiring prompt protective action, if he or she cannot be reached in time.

2. All archives and records of the Bank and, in general, all documents and any data or data media belonging to the Bank or in its possession, shall be inviolable at any time and in any place.

...

Article 5

Immunities from Jurisdiction and Execution

1. All deposits entrusted to the Bank, all claims against the Bank and the shares issued by the Bank shall, without the express prior agreement of the Bank, wherever located and by whomsoever held, be immune from any form of seizure, attachment, sequestration, execution, requisition, confiscation, expropriation, freeze or any other form of seizure by executive, judicial or legislative action.

2. The Bank, including the Representative Office, shall enjoy immunity from every form of legal process in ... the HKSAR, except:

(a) with respect to contracts relating to real estate in the HKSAR or to the supply of goods or services for the Representative Office, which are concluded with a person resident or a body incorporated or having its principal place of business or domicile in the HKSAR at the time of the conclusion of the contract, unless otherwise agreed; or

(b) in the case of any civil action brought by a third party for damage resulting from an accident caused by a motor vehicle belonging to, or operated on behalf of the Bank, or in respect of a motor traffic offence involving such a vehicle.

3. The immunity provided for above may be expressly waived in individual cases by the President, the General Manager or the Assistant General Manager of the Bank or their duly authorized representative, in writing or in a duly authenticated telecommunication or by the terms of a contract.

4. Property and assets of the Bank shall be exempt from any measure of compulsory execution in ... the HKSAR, except for any final judgment rendered by any HKSAR court which has jurisdiction over the Bank pursuant to paragraph 2 above.

5. The Administrative Tribunal of the Bank (as described in Article 4.2 of the Headquarters Agreement of the 10th February 1987 determining the legal status of the Bank in Switzerland) shall have exclusive and final jurisdiction over all disputes arising in connection with employment, welfare and pension matters between the Bank and its personnel or its former personnel, or persons claiming through them.

Article 6

Communications

1. All official correspondence and communications to or from the Representative Office, by whatever means and in whatever form transmitted or received, shall be immune from censorship and any other form of interception or interference.
2. The Bank shall be entitled to use codes and encryption for its official communications. The Bank shall also be entitled to send and receive official correspondence and communications, on any form of data media, including by duly identified couriers or in sealed bags, which shall have privileges and immunities as accorded to the Specialized Agencies of the United Nations. The Bank shall in particular be entitled to unfettered access to world-wide telecommunication links of its choice. The Bank may, with the consent of the relevant HKSAR authority regarding technical requirements, use a wireless transmitter in the HKSAR and install and operate in the HKSAR point-to-point telecommunication facilities and such other telecommunications and transmission facilities as may be necessary to facilitate communications with the Representative Office both from within and outside the HKSAR.
3. The Bank shall benefit, in respect of all official communications, from the same treatment as granted by the Government to any Specialized Agency of the United Nations insofar as such treatment is compatible with the International Telecommunication Convention.

Article 7

Publications, Data and Data Media

The importation of publications and all kinds of data or data media for the Bank's use, and the exportation of the Bank's publications and all kinds of data or data media, shall not be subject to any restriction.

Article 8

Tax Exemptions

1. The Bank, its assets, income and other property shall be exempt from all direct taxes and other taxes, dues, duties or rates of any kind except:
 - (a) excise duties, taxes on the sale of movable and immovable property and taxes on the provision of services which form part of the price to be paid ...;

(b) charges for specific services rendered to the Representative Office, provided such charges are non-discriminatory and generally levied; and

(c) the government rent levied by the Government of the HKSAR under Article 121 of the Basic Law or the terms of land leases.

2. The Bank shall not be subject to taxation on the rent or lease for any premises rented by it and occupied by its services or personnel.

3. The operations of the Bank shall be exempt from all taxes, dues, duties or rates of any kind.

4. The Bank shall not be liable for the collection or payment of any tax, due, duty or rate of any kind.

Article 9

Customs Treatment

1. The Bank shall be exempt in the HKSAR from all customs duties, license fees, taxes and other levies, and from economic restrictions on imports and exports, on all goods and articles, including motor vehicles, spare parts, publications, data and data media, which are imported or exported by the Bank for its official use, and from any obligation for the payment, withholding or collection of any customs duty. ...

2. The Bank shall receive the same preferential customs treatment as that granted by the Government to any Specialized Agency of the United Nations in the HKSAR.

...

Article 11

Pension and Special Funds

The pension fund of the Bank (and any special fund created by the Bank in connection with other welfare arrangements provided by it, in particular in order to accumulate reserves) shall enjoy, irrespective of whether or not the fund has a separate legal personality, the same exemptions, privileges and immunities as are enjoyed by the Bank itself with regard to its property. These funds are exempt only to the extent that they are exclusively for the benefit of the Bank or its personnel or its former personnel or persons claiming through them.

Article 12

Social Welfare

1. The Bank, as an employer, shall be exempt from the Employment Ordinance, the Employees' Compensation Ordinance, the Mandatory Provident Fund Schemes Ordinance and any legislation applicable in the HKSAR regarding old-age and surviving-dependents insurance, or incapacity insurance, or unemployment insurance, or insurance for health care or against accident, or occupational pension schemes, or welfare systems of any kind, save in respect of any person who is engaged by the Representative Office as a local employee.

2. The Representative Office's personnel, other than any person who is engaged by the Representative Office as a local employee, shall be exempt from such legislation as is referred to in paragraph 1 above and, in particular, from any mandatory contribution to any insurance or welfare scheme, unless an agreement to the contrary is reached between the Bank and the relevant HKSAR authorities. This exemption does not apply in relation to the employment of any person by personnel of the Representative Office in their private capacity.

...

Article 13

Privileges, Immunities and Exemptions of Members of the Board of Directors, the President of the Bank, the General Manager and Assistant General Manager of the Bank and Representatives of the Bank's Member Central Banks

Members of the Board of Directors of the Bank, the President of the Bank, the General Manager of the Bank, the Assistant General Manager of the Bank and representatives of the central banks which are members of the Bank shall enjoy the following privileges, immunities and exemptions while carrying out official Bank activities and throughout their journey to or from the place where a meeting is held in the HKSAR:

- (a) immunity from arrest or imprisonment and immunity from inspection or seizure of personal baggage, except in flagrant instances of criminal offence;
- (b) immunity from inspection or seizure of official baggage;
- (c) inviolability of all papers, documents, data or data media;

(d) immunity from the jurisdiction of any ... HKSAR ... court or tribunal with respect to things done or omitted to be done in connection with official Bank activities, including words spoken and writings, even after their mission has been accomplished;

(e) the same customs privileges and facilities as those granted by the Government to officials of comparable rank of any Specialized Agency of the United Nations in the HKSAR;

...

(h) the right to use codes or encryption in official communications, and the right to receive or send official documents or correspondence by means of duly identified couriers or sealed bags.

Article 14

Status of the Senior Resident Representative and Senior Officials of the Representative Office

The senior resident representative, as well as such senior officials as are designated by the General Manager of the Bank, or the Assistant General Manager of the Bank, and who are neither Chinese nationals nor permanent residents of the HKSAR, upon the notification of their designation to the relevant HKSAR authorities, shall enjoy the same privileges, immunities, exemptions and facilities as those granted by the Government to officials of comparable rank of any Specialized Agency of the United Nations in the HKSAR. In particular, such persons shall be granted, by the appropriate government authorities, the same customs privileges and facilities as those granted to officials of comparable rank of any Specialized Agency of the United Nations in the HKSAR.

Article 15

Privileges, Immunities and Exemptions Granted to All Personnel of the Representative Office

All personnel of the Representative Office, regardless of nationality or permanent residence status, shall be immune from the jurisdiction of any HKSAR court or tribunal with respect to things done or omitted to be done while carrying out official Bank activities, including words spoken and writings, even when such persons are no longer employed by the Bank.

Article 16

Privileges, Immunities and Exemptions Granted to Personnel of the Representative Office Who Are neither Chinese Nationals nor HKSAR Permanent Residents

Personnel of the Representative Office together with their respective spouse and dependent children under the age of 21, who are neither Chinese nationals nor permanent residents of the HKSAR, shall:

...

(e) enjoy immunity from inspection or seizure of official baggage;

(f) enjoy the same customs privileges and facilities as those granted by the Government to the personnel of comparable rank of any Specialized Agency of the United Nations in the HKSAR;

(g) be exempt from any tax on salaries, fees, emoluments and allowances paid to them by the Bank; and

(h) be exempt, at the time of payment, from any tax on capital payments, if any, paid to them by the Bank, including capital payments paid to them by way of indemnity for sickness or accident; income derived from such capital payments, as well as annuities and pensions paid to former personnel of the Bank, shall not be exempt from tax.

...

Article 18

Experts

1. Experts who are neither Chinese nationals nor permanent residents of the HKSAR and who carry out temporary missions for the Bank shall, in connection with their missions, be assimilated to the personnel of the Representative Office with respect to the privileges, immunities and exemptions specified in Articles 15 and 16 of this Agreement.

2. Experts who are Chinese nationals or permanent residents of the HKSAR and who carry out temporary missions for the Bank shall, in connection with their missions, enjoy the privileges, immunities and exemptions specified in Article 15 of this Agreement.

Article 19

Purpose of, Waiver of, and Exceptions to, Immunity

1. The privileges, immunities, exemptions, facilities, assurances and other rights referred to in this Agreement are solely granted to ensure, in all circumstances, the freedom of action of the Bank and the complete independence of persons performing official activities for the Bank, and are not granted for the personal benefit of those persons.

...

3. The President of the Bank, or the General Manager of the Bank, or the Assistant General Manager of the Bank shall, if they consider that the immunity of any member of the personnel of the Representative Office or expert is being used to hinder the normal course of justice, and that it is possible to waive such immunity without prejudicing the interests of the Bank, waive that immunity.

...

5. No person enjoying the privileges, immunities or exemptions referred to in this Agreement shall be immune from jurisdiction or, where applicable, from execution, in the event of legal proceedings against them with respect to damage occasioned by a motor vehicle in their ownership or control.

...

...

Article 21

Security of the HKSAR

1. Nothing in this Agreement shall affect the right of the Government to apply any appropriate safeguard in the interests of the security of the HKSAR. ...

...

Article 22

Scope and Implementation

...

2. All commitments undertaken and privileges, immunities, exemptions, facilities, assurances and other rights provided for in this Agreement shall, as the case may be, apply to:

(a) the Bank;

(b) the Representative Office and any branch and any wholly owned subsidiary established and carrying out activities in the performance of the Bank's objects;

(c) any investment fund or similar fund which is established and maintained by the Bank in the performance of the Bank's objects and which is wholly controlled by the Bank; and

(d) subsidiaries of the Bank which are not wholly owned by the Bank but are carrying out activities in the performance of the Bank's objects, and which are approved by the Government for these purposes.

...

4. Unless otherwise provided in this Agreement, the privileges and immunities conferred on the Bank by this Agreement shall be no less than those granted by the Government to the Specialized Agencies of the United Nations under the Convention on the Privileges and Immunities of the Specialized Agencies of 21st November 1947.

SCHEDULE 2

[s. 4]

ARTICLE 1 OF BRUSSELS PROTOCOL HAVING FORCE OF LAW IN HONG KONG

Article 1

The Bank for International Settlements, its property and assets as well as all the property and assets which are or will be entrusted to it, whether coin or other fungible goods, gold bullion silver or any other metal, precious objects, securities or any other objects the deposit of which is admissible in accordance with banking practice, are exempt from the provisions or measures referred to in paragraph 2 of Article X of the Agreement with Germany and in Article 10 of the Constituent Charter consecutive to the Convention with Switzerland, of the 20th January 1930.

The property and assets of third parties, held by any other institution or person, on the instructions, in the name or for the account of the Bank for International Settlements, shall be considered as entrusted to the Bank for International Settlements and as enjoying the immunities laid down by the Articles above-mentioned by the same right as the property and assets which the Bank for International Settlements holds for the account of others, in the premises set apart for this purpose by the Bank, its branches or agencies.

LAM Chik-ting, Tony
Clerk to the Executive Council

COUNCIL CHAMBER
6 May 2008

Explanatory Note

In December 1997, the Government of the People's Republic of China acceded to the Brussels Protocol which confers on the Bank for International Settlements certain immunities. In May 1998, it entered into an agreement with the Bank relating to the establishment and status of a representative office of the Bank in Hong Kong. This Order declares that certain provisions relating to the privileges and immunities of the Bank, its representative office and their personnel, etc. under the agreement and the Protocol are to have the force of law in Hong Kong.